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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/765,321	01/26/2004	George S. Gabriel	364106/0347 SBP/JFD	9436

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EXAMINER
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PHAM, MINH CHAU THI

ART UNIT	PAPER NUMBER
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1724

DATE MAILED: 02/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/765,321	<b>Applicant(s)</b> GABRIEL ET AL.	
	<b>Examiner</b> Minh-Chau T. Pham	<b>Art Unit</b> 1724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 23 December 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Strzempko et al (6,588,373 B1), in view of Gabriel et al (6,158,387).

Strzempko et al disclose a filter cap for a cage comprising a rigid filter frame (240) to cover the open top of the top cage (10) wherein the filter frame has a body portion with perforated top wall, a rigid filter retainer (260, 262) to fit upon the filter frame (240) wherein the filter retainer is mounted on the top of the filter frame, a shield (218) secured to the undersurface of the filter frame, a first attachment means (194, 226) for securing the shield to the filter frame (col. 11, lines 43-47), and a second attachment means (136, 230) for securing the filter retainer to the filter frame (col. 9, lines 10-19). The attachment means comprises one detent means and one slot to facilitate attachment (see 136 and 230, col. 9, lines 10-19; and 194 and 226, col. 11, lines 43-47). Claims 1-8 differ from the disclosure of Strzempko et al in that the filter cap having an open top, a rigid filter frame, a retainer and a chew shield. Gabriel et al disclose a cage and rack system having a filter cap (70) with a rigid filter retainer (100), an air filter (99) sandwiched between the top rigid retainer (104) and a bottom rigid retainer (92). This bottom rigid retainer (92) not only protects the air filter (99) by forming a rigid barrier between animals within the cage from causing damage to the air filter (99) (see col. 11, lines 5-11). So, this bottom rigid retainer (92) is inherently used to support the air filter (99) and to serve as a chew shield from animals causing damage to the air filter (99). It is within the routine skill in the art to provide a unitary structure (such as retainer (92)) in plural parts (one as a bottom retainer and one as a chew shield underneath it) as a matter of design choice. See Nervin v. Erlichman, 168 USPQ 177, 179. Gabriel et al further disclose a filter frame (100) as well as the filter retainer (104) having side walls (106) extending from the perforated top wall (104) (see col. 9, lines 47-51). It would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide a filter retainer with chew shield as taught by Gabriel et al in the cage of Strzempko et al since it is well known in the art that the chew shield would provide protection for the air filter from damage caused by the animals therein.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Strzempko et al (6,588,373 B1), in view of Gabriel et al (6,158,387), and further in view of Thomas (4,690,100).

Claim 9 calls for the filter frame made of a transparent material. Thomas discloses the filter panel being made of a transparent material such as polycarbonate plastic (see col. 4, lines 19-22). It would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide the filter frame of Strzempko et al and Gabriel et al to be made of transparent material as taught by Thomas since transparency would provide visual inspection of the condition of the filter frame for maintenance purpose.

### ***Double Patenting***

Claim 1 is again rejected under the judicially created doctrine of double patenting over claim 15 of U. S. Patent No. 6,729,266 B1 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: A filter cap for an animal cage comprising a filter frame, a filter retainer, a chew shield, first and second attachment means for securing the shield and filter retainer to the filter frame.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. See MPEP § 804.

### ***Response to Arguments***

Applicant's arguments filed on December 23, 2005 have been fully considered but they are not persuasive.

Applicant argues that the cited prior art Strzempko et al does not disclose "a filter cap having a rigid filter frame, a rigid filter retainer and a chew shield". The Examiner still maintains Strzempko et al as the primary reference and newly introduces Gabriel et al as the secondary reference in combination with Strzempko et al under the 103(a) rejection to show a cage and rack system having a filter cap (70) with a rigid filter retainer (100), an air filter (99) sandwiched between the top rigid retainer (104) and a bottom rigid retainer (92). This bottom rigid retainer (92) not only protects the air filter (99) by forming a rigid barrier between animals within the cage from causing damage to the air filter (99) (see col. 11, lines 5-11). So, this bottom rigid retainer (92) is inherently

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used to support the air filter (99) and to serve as a chew shield from animals causing damage to the air filter (99). It is within the routine skill in the art to provide a unitary structure (such as retainer (92)) in plural parts (one as a bottom retainer and one as a chew shield underneath it) as a matter of design choice. See Nervin v. Erlichman, 168 USPQ 177, 179. Gabriel et al further disclose a filter frame (100) as well as the filter retainer (104) having side walls (106) extending from the perforated top wall (104) (see col. 9, lines 47-51). It would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide a filter retainer with chew shield as taught by Gabriel et al in the cage of Strzempko et al since it is well known in the art that the chew shield would provide protection for the air filter from damage caused by the animals therein.

The Examiner respectfully points out to Applicant that the double patenting issue has not been addressed to or resolved from the last response.

Applicant's arguments with respect to claims 1-9 have been thoroughly considered but are moot in view of the new ground(s) of rejection, as discussed above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Minh-Chau T. Pham whose telephone number is (571) 272-1163. The examiner can normally be reached on Mon/Tues/Thur/Fri 7:00 am - 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duane Smith can be reached on (571) 272-1166. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**Minh-Chau Pham**  
**Patent Examiner**  
**Art Unit : 1724**  
**February 21, 2006**